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TAGS: [PHUM](#) [PGOV](#) [KJUS](#) [PTER](#) [CO](#)
SUBJECT: FISCALIA: NO PATTERN OF ARBITRARY DETENTION, BUT
REVIEWING HUMAN RIGHTS DEFENDERS CASES

REF: A. BOGOTA 2019
[1](#)B. BOGOTA 1824

Classified By: Acting Political Counselor Scott Higgins
Reasons: 1.4 (b) and (d)

SUMMARY:

[1](#)1. (U) Advisor to the National Director of Prosecutors Maria Ximena Rincon told us the Prosecutor General's Office (Fiscalia) is reviewing 32 cases documented in a recent Human Rights First (HRF) report on alleged baseless prosecutions and arbitrary detentions of human rights defenders. The report charges that the Prosecutor General's Office frequently uses unfounded information provided by military intelligence to bring spurious criminal cases against activists. Of the 32 cases in the report, two-thirds were dismissed by a reviewing prosecutor or judge. Rincon rejected HRF's claims of a "pattern" of harassment of human rights defenders, but acknowledged isolated cases exist. She said the Prosecutor General's Office is considering additional measures to ensure cases against activists are handled properly. End Summary

HR DEFENDERS DISPROPORTIONATELY
SUBJECTED TO SPURIOUS CHARGES, DETENTION

[1](#)2. (U) U.S.-based HRF's report, "Baseless Prosecutions of Human Rights Defenders in Colombia," outlines a pattern leading to arbitrary detention of human rights defenders, including: prosecutorial bias; unreliable and coached testimony from demobilized paramilitaries; illegal use of intelligence reports; and public smear campaigns. The report acknowledges there is no evidence of a "central policy" to maliciously prosecute human rights defenders, but it asserts that politically-motivated cases are "systemic and widespread." HRF documents 32 cases of spurious legal actions against 61 human rights activists from 2002-2008; in 27 of the cases the accused were detained. Of the 32 cases documented by HRF, over two-thirds were dismissed--14 by a reviewing prosecutor and 9 by a judge. Nine cases are pending, one of which is on appeal after the judge found the defendant not guilty.

[1](#)3. (U) The United Nations Working Group on Arbitrary Detention March 2009 report outlines similar trends

identified in the HRF report, including the "disproportionate" detention of human rights defenders and labor leaders based on the testimony of demobilized witnesses. The Working Group attributes these judicial system failings to the continued use of the old inquisitorial system (Law 600), which remains in force for investigations of alleged crimes that took place prior to the launch of the new legal code fully adopted in January 2008. The Working Group says Law 600 provides insufficient due process rights, in contrast to the new accusatory system (Law 906).

¶4. (U) Recognizing that arbitrary detentions of defenders has decreased since the enactment of Law 906, the Working Group recommends the use of the accusatory system for all new cases, regardless of when the crime took place. Prosecutor General's Office National Director of Prosecutors German Ortega agreed the new accusatory system provides for impartial and rigorous assessment of evidence and imposes stricter limits on detention, but said Colombian law and jurisprudence specifically restricts application of Law 906 to crimes that took place after its introduction.

¶5. (C) HRF cites the illegal use of intelligence "usually prepared by the armed forces" as evidence in the prosecutions. According to a Prosecutor General's Office report on Department of Administrative Security (DAS) intelligence collection (REF A), one intent of the DAS spying was to generate information that could be used to develop cases against human rights activists. It is unclear if DAS intelligence was used in the HRF cases.

FISCALIA INITIATES NEW EFFORTS TO OVERSEE CASES

¶6. (C) Advisor to the National Director of Prosecutors Maria Ximena Rincon rejected HRF's claim of a "pattern" of malicious prosecutions, noting the HRF report documents only 32 allegedly baseless cases in a six year period, which could not be considered "widespread."

¶7. (C) Still, Rincon acknowledged isolated cases of politically-motivated detention and prosecutions against human rights defenders remain a concern. As a result, the Prosecutor General's Office is in the process of implementing new strategies to oversee cases against defenders. A review of the 32 cases in the HRF report is currently underway in the National Director for Prosecutors office; based on the review's findings, the Prosecutor General's Office will evaluate how best to handle such cases in the future. Rincon said the Prosecutor General's Office is developing specialized guidelines to ensure cases against defenders are managed properly, but noted there was no timeline for the implementation of the guidelines.

¶8. (C) Rincon said the Prosecutor General's Office is also working toward a standardized review process of cases against human rights defenders, as defined by the Inter-American Commission on Human Rights. This review would most likely be made by regional prosecutors in the new Humanitarian Issues Units, or possibly in the National Director of Prosecutors office or regional Human Rights Units. Humanitarian Issues Units were designed by Ortega to support the Human Rights Unit and its regional offices by handling cases not assigned to the overburdened Human Rights Unit, e.g. cases involving crimes against defenders, indigenous, afro-colombians, and other vulnerable groups.

¶9. (C) Regarding HRF's criticisms of investigations based on implausible testimony, Ortega noted prosecutors are legally mandated to investigate all formal claims (denuncias), regardless of the credibility of the witness. Rincon questioned the report's claim that all witnesses from the reintegration program are unreliable and are falsely testifying against defenders. Alluding to the parapolitical scandal, she noted that some Justice and Peace Law confessions had led to high-profile investigations of individuals across the political spectrum.

SPECIAL RAPPORTEURS TO VISIT COLOMBIA

¶10. (U) Colombia invited UN Special Rapporteurs to further investigate these issues; the Special Rapporteur on the situation of human rights defenders will arrive September 2009 and the Special Rapporteur on the independence of judges and lawyers will arrive October 2009.

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